

S.B.Criminal Misc. Petition No.247/2005
(Allah Bux & Ors. vs. State of Rajasthan & Anr.)

Date of order : 18.7.2006

HON'BLE MR.H.R.PANWAR,J.

Mr. L.D.Khatri, for the petitioners.

Mr. Ashok Upadhyaya, P.P.

Mr. Narpat Singh Bhati for non-petitioner No.2.

Heard learned counsel for the parties.

Learned counsel for the parties submit that the controversy involved in the instant petition is squarely covered by a Three Judge Bench decision of Hon'ble Supreme Court in Ranjit Singh vs. State of Punjab **(1998) 7 SCC 149**, wherein the Hon'ble Supreme Court held that power of Court of Session to array a new person or persons as accused under section 319 cannot be invoked prior to evidence collection stage. It was further held that there is no power except that in Sec.319 by which Court of Session can array a new person as an accused. In this view of the matter, the order impugned is contrary to the decision of the Hon'ble Supreme Court and, therefore, liable to be set aside.

Consequently, the misc. petition is allowed. Order dt. 01.3.2005 passed by Sessions Judge, Jaisalmer in Sessions Case

No.42/2002 is set aside. However, it is open for the prosecution to array a new person or persons as accused at the stage of section 319 Cr.P.C.

Ad interim stay order dt. 15.3.2005 is vacated. Stay petition also stands disposed of.

(H.R.PANWAR),J.

m.asif/-